



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

FOURTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

ORVILLE FUA y ANO-OS, ET
AL.,

Accused.

CRIM. CASE NO. SB-19-
CRM-0100

For: Violation of Section
3(e) of R. A. No. 3019

Present:

QUIROZ, J., *Chairperson*

CRUZ, J.

JACINTO, J.

Promulgated on:

JUL 24 2019 / 

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RESOLUTION

CRUZ, J.

This resolves the following:

1. *Omnibus Motion: 1. For Reinvestigation; and 2. To Recall the Warrant of Arrest or Defer the Implementation Thereof*¹ ("Omnibus Motion") dated 31 May 2019 filed by accused-movant Nancy Perez ("Perez"), now known as Nancy A. Catamco;
2. *Urgent Motion to Dismiss with Alternative Prayer to Consolidate with SB-19-CRM-0099, People v. Orville A. Fua,*

¹ Records, pp. 249-252.





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*et al. and to Reduce Bail Bond*² (“Motion to Dismiss”) dated 4 June 2019 filed by accused-movants Orville Ano-os Fua, Ana Marie Leilani Sumalpong Monte, Rose Marie Villacampa Tomogsoc, Ivan Ypil Marchan, Natalio Bongcawel Jumawan, Jr. and Sue Agnes Aljas Castillon (“Fua, et al.”); and

3. *Consolidated Comment/Opposition*³ dated 18 June 2019 filed by the prosecution.

Perez's Omnibus Motion

Perez claims that she learned about the present case only on 29 May 2019 when her co-accused and former husband, Pompey M. Perez, sent her a copy of the Information impleading both of them as among the accused.

She argues that she was not accorded her right to preliminary investigation as she received no notice requiring her to submit her counter-affidavit before the Office of the Ombudsman. She maintains that her office address indicated in the records of the case, *i.e.*, Perzebros Company, located at La Fuerza Plaza, 2241 Don Chino Roces Avenue, Makati City, no longer exists because the said partnership was already dissolved in 2008. She claims that her present address at Block 6, Lot 1, Lexington Garden Village, San Joaquin, Pasig City, can be easily verified from the Articles of Partnership of Perzebros Company. She posits that the lack of notice on her appears to be deliberate and unjustified.

She further argues that, had she been accorded her substantive right to preliminary investigation, the Office of the Ombudsman would have found no probable cause against her given her apparent lack of participation in the transaction subject of the present case. She also contends that the warrant of arrest issued against her should be recalled due to a violation of her substantive right to a preliminary investigation.

The prosecution counters that Perez was never deprived of her right to due process as she was given the opportunity to present her countervailing evidence through the issuance of an Order by the Office of the Ombudsman directing her to submit her counter-affidavit and other evidence. It claims that such Order, addressed to the business address of Perzebros Company, the private supplier involved in this case, where she was a partner at the time of the transaction, satisfied the requirement of due process, *i.e.*, the

² *Id.*, pp. 257-268.

³ *Id.*, pp. 341-352.

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opportunity to be heard. It argues that Perez's reliance on Section 6, Rule 112 of the Rules of Court in her motion for reinvestigation is misplaced inasmuch as such provision does not apply to her, for she has not been arrested nor did the case undergo inquest proceedings.

Fua, et al.'s Motion to Dismiss

Fua, et al. argue that there was inordinate and unexplained delay in the filing of the Information dated 12 July 2017. To support such argument, they presented the following timeline of incidents relating to the present case:

Date	Incident
June 29, 2016	Complaint filed by the FIO-OMB
November 4, 2016 December 4, 2016 December 5, 2016	Counter-affidavits separately filed by respondents
July 12, 2017	Ombudsman Resolution finding probable cause
September 19, 2017	Motion for Reconsideration filed by Respondents
February 28, 2018	Order denying Motion for Reconsideration
May 17, 2019	Information filed with the Court

They claim that the inordinate delay in their case has caused them and their families much prejudice, for they have to contend with expenses and anxiety. They further argue that the prosecution has not explained the inordinate delay in filing the Information.

They also maintain that the present case should be consolidated with Criminal Case No. SB-19-CRM-0099 pending before the Third Division of the Court because they emanate from the same Ombudsman Resolution dated 12 July 2017. Although involving two (2) sets of transactions, they involve common questions of fact and law and the same set of accused. They argue that the defenses, documentary and testimonial evidence of accused will be the same for both cases.

As regards their motion to reduce bail bond, they claim that they are ordinary provincial citizens with limited income, some of whom even retired and separated from government. They maintain that they

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are financially challenged to post the ₱30,000.00 bail recommended in the present case and in Criminal Case No. SB-19-CRM-0099. They pray that the bail be reduced to ₱15,000.00 to be posted in cash. In the meantime, they further pray to hold in abeyance the issuance of a warrant of arrest against them, or if one has already been issued, that the same be recalled in the interest of justice.

The prosecution argues that Fua, et al.'s motion to reduce bail should be denied. It posits that they are not yet under the custody of the law considering that they have not yet been arrested, much less have voluntarily surrendered and submitted themselves to the jurisdiction of the Court.

It also refutes their argument that the proceedings before the Office of the Ombudsman was attended by inordinate delay. It explains that from the time that the Complaint was filed with the Office of the Ombudsman on 29 July 2016 and the filing of the Information on 17 May 2019, only two (2) years and ten (10) months have elapsed. It points out that within this period, they as then respondents filed several incidents (sic) and pleadings that included their respective counter-affidavits and motions for reconsideration.

It emphasizes further that accused-movants failed to specifically demonstrate how the perceived delay prejudiced them. Instead, they merely offered abstract generalities.

The prosecution considers as specious their argument that the length of time between the date of the Information, i.e., 12 July 2017, and its filing on 17 May 2019 constitutes inordinate delay. It clarifies that the Information dated 12 July 2017 was approved by the then Ombudsman Conchita Carpio Morales on 2 May 2018 and by the new Ombudsman Samuel R. Martires on 5 April 2019. It explains further that the Information would have been defective without the *imprimatur* of the Ombudsman, for only informations with the written authority or approval of the Ombudsman may be filed with the Court, based on Section 4, Rule II of the Rules of Procedure of the Office of the Ombudsman.

Lastly, the prosecution argues that the consolidation of this case with the case pending before the Third Division of the Court is legally untenable primarily on the ground that they do not involve the same parties nor do they involve the same transaction or incident. The only common denominator between the cases are the accused public officials, nothing more. It emphasizes that the consolidation of these two (2) cases involving different sets of private individuals would unduly expose them to totally unrelated testimonies and documentary

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evidence, and to the inconvenience of a legal battle in the case where they are not involved.

Court's Discussion and Ruling

a) On Perez's Omnibus Motion

The Omnibus Motion filed by Perez lacks merit and should be denied.

Her motion for reinvestigation is a prohibited motion for having been filed without prior leave of court. Section 2 paragraph (c), Rule VII of the Court's 2018 Revised Internal Rules, that has similar wording with that in Item III(2)(b)(iii) of the Revised Guidelines for Continuous Trial of Criminal Cases, provides:

Sec. 2. Prohibited Motions. – The following are prohibited motions:

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(c) Motion for reinvestigation of the prosecutor recommending the filing of information once the information has been filed before the Sandiganbayan [1] if the motion is filed without prior leave of court; [2] when preliminary investigation is not required under Section 8, Rule 112; and [3] when the regular preliminary investigation is required and has been actually conducted, and the grounds relied upon in the motion are not meritorious, such as issues of credibility, admissibility of evidence, innocence of the accused, or lack of due process when the accused was actually notified, among others;

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The Sandiganbayan shall deny outright any prohibited motion. (Emphasis supplied)

Inasmuch as Perez anchors her motion to recall the warrant of arrest or defer the implementation thereof on the granting of her motion for reinvestigation, the Court likewise denies the same.

Since Perez claims that the office address of Perzebros Company in La Fuerza Plaza, 2241 Don Chino Roces Avenue, Makati City that the records of the case indicates as her address no longer exists, let an amendment be made of the records to indicate her given address as Block 6, Lot 1, Lexington Garden Village, San Joaquin, Pasig City.

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b) On Fua, et al.'s Motion to Dismiss

Jurisprudence recognizes that the concept of speedy disposition of cases is relative or flexible. A mere mathematical reckoning of the time involved is not sufficient. Particular regard must be taken of the facts and circumstances peculiar to each case. The factors to be considered to determine if the right to a speedy disposition of cases is violated, called the balancing test, are the following: (1) the length of delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.⁴

Regarding the first factor, records reveal that on 23 September 2016, the Field Investigation Office of the Office of the Ombudsman, as the nominal complainant, filed the Complaint⁵ dated 29 June 2016 with the Office of the Ombudsman against the accused-movants, then respondents. The latter filed their respective counter-affidavits on various dates in November and December 2016.⁶ The Office of the Ombudsman issued a Resolution⁷ on 12 July 2017 that was approved by then Ombudsman Conchita Carpio-Morales on 31 July 2017. Notably, several respondents submitted their respective motions for reconsideration on 19 September 2017 and 20 September 2017 for which the Office of the Ombudsman issued an Order⁸ dated 28 February 2018, approved by then Ombudsman Carpio-Morales on 27 March 2018. The present Ombudsman Samuel R. Martires approved the Information⁹ on 5 April 2019. The Information was filed with the Court on 17 May 2019.

From the time of the filing of the Complaint on 23 September 2016 to the filing of the Information in Criminal Case No. SB-19-CRM-100 on 17 May 2019, only **2 years 7 months and 24 days** had lapsed. To the Court, this period should not be deemed as undue and inordinate length of delay. It must be noted that between these dates, the then respondents were given the opportunity to submit their respective counter-affidavits. The Office of the Ombudsman issued a Resolution within seven (7) months from the dates of filing of the respondents' counter-affidavits. Their motions for reconsideration further lengthened the period of preliminary investigation. Such Office resolved their motions within a reasonable time by issuing an Order denying their motions within six (6) months from filing of the same.

⁴ *People v. Sandiganbayan (Fifth Division)*, G.R. No. 233063, 11 February 2019.

⁵ Records, pp. 48-65.

⁶ *Id.*, pp. 213-223; 232-234; 235; 236-243; 239-242.

⁷ *Id.*, pp. 8-36.

⁸ *Id.*, pp. 38-46.

⁹ *Id.*, pp. 1-4.




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The Court, moreover, takes judicial notice of the fact that the final disposition of preliminary investigation got caught in the transition between the respective terms of office of Ombudsman Carpio-Morales and Ombudsman Martires. Taking all of these into account, the Court considers the whole period of preliminary investigation as reasonable and not constitutive of inordinate delay.

There being no unreasonable length of delay, the Court will no longer discuss the other factors of the balancing test. "Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance."¹⁰

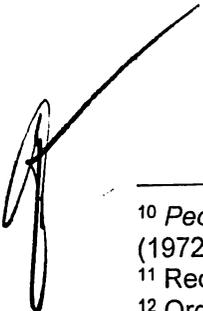
As to the motion to reduce bail, the Court denies the same for having become moot. Accused-movant Orville Ano-os Fua, Ana Marie Leilani Sumalpong Monte, Rose Marie Villacampa Tomogsoc, Natalio Bongcawel Jumawan, Jr. and Sue Agnes Aljas Castillon already posted their respective cash bonds for their provisional liberty in the amount of ₱30,000.00 each with the Regional Trial Court of Siquijor, Branch 46.¹¹ Accused-movant Ivan Ypil Marchan posted his cash bond with the Court for the same amount.¹²

Finally, the Court likewise denies their motion to consolidate the present case with Criminal Case No. SB-19-CRM-0099 pending before the Third Division of the Court. As correctly pointed out by the prosecution, only the accused public officials are the same in the Informations in both cases. The dates of commission of the offenses, the accused private individuals, the entities that they represent and the amounts involved in the transactions, among other details in both Informations, are different.

In this regard, Section 4, Rule XIII of the 2018 Revised Internal Rules of the Court, reads:

Sec. 4. Consolidation and Transfer of Cases. – Cases arising from the **same incident or series of incidents**, or involving common questions of fact and law, may be consolidated in the Division to which the case bearing the lowest docket number is assigned, in order to promote the speedy disposition of cases, and serve the convenience of the parties and the interest of justice. (Emphasis supplied)

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¹⁰ *People v. Domingo*, G.R. No. 204895, 21 March 2018, citing *Barker v. Wingo*, 407 US 514, 530 (1972).

¹¹ Records, pp. 298-335. Also includes the cash bond of accused Teodoro Gom-os Jumadla, Jr.

¹² Order dated 14 June 2019, *Id.*, p. 292.

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The transactions involved in the present case and in Criminal Case No. SB-19-CRM-0099 cannot be classified as “arising from the same incident or series of incidents, or involving common questions of fact and law.” Moreover, “consolidation should be refused if it will unduly expose a party x x x to totally unrelated testimonies x x x.”¹³ Here, the accused private individuals (Nancy Perez and Pompey Perez) representing a private entity (Perzebros Company) are allegedly involved in a transaction that is different from the one allegedly entered into by the accused private individuals representing a private entity in Criminal Case No. SB-19-CRM-0099. If consolidation were to be granted, the accused private persons in this case would be confronted with testimonial and other evidence to be presented in Criminal Case No. SB-19-CRM-0099 that are not related to the transaction subject of the present Information. The Court cannot countenance this.

WHEREFORE, premises considered, the Court **DENIES** accused-movant Nancy Perez’s (now Nancy A. Catamco) Omnibus Motion and accused-movants Orville Ano-os Fua, Ana Marie Leilani Sumalpong Monte, Rose Marie Villacampa Tomogsoc, Ivan Ypil Marchan, Natalio Bongcawel Jumawan, Jr. and Sue Agnes Aljas Castillon’s Motion to Dismiss for lack of merit.

Let the records of this case indicate the given address of accused Nancy Perez (now Nancy A. Catamco) as Block 6, Lot 1, Lexington Garden Village, San Joaquin, Pasig City instead of Perzebros Company, Suite 304, La Fuerza Plaza, 2241 Don Chino Roces Avenue, Makati City.

SO ORDERED.


REYNALDO P. CRUZ
Associate Justice

We Concur:


ALEX L. QUIROZ
Chairperson/
Associate Justice


BAYANI H. JACINTO
Associate Justice

¹³ *Neri v. Sandiganbayan (Fifth Division)*, G.R. No. 202243, 7 August 2013, citing *People v. Sandiganbayan (First Division)*, G.R. No. 149495, 21 August 2003.